

ADMINISTRATIVE POLICIES AND PROCEDURES

State of Tennessee Department of Correction

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Approved by:

Subject: DRUG-FREE WORKPLACE

- I. <u>AUTHORITY</u>: TCA 44-103, TCA 43-603, TCA 43-606, TCA 39-16-201, 50-9-101 et seq., and 49 C.F.R. Part 40.
- II. <u>PURPOSE</u>: To enhance professionalism and safety by promoting a drug-free workplace within the Tennessee Department of Correction (TDOC).
- III. <u>APPLICATION:</u> To all TDOC employees.

IV. DEFINITIONS:

- A. <u>Alcohol</u>: Has the same meaning as in the federal regulations describing procedures for the testing of alcohol by programs operating pursuant to the authority of the United Stated Department of Transportation as currently compiled at 49 Code of Federal Regulations (C.F.R.) Part 40, as the same may be revised from time to time.
- B. <u>Alcohol Testing</u>: The analysis of breath, blood, or any other analysis which determines the presence and level or absence of alcohol as authorized by the U.S. Department of Transportation in its rules and guidelines concerning alcohol testing and drug testing.
- C. <u>Applicant</u>: A person who has applied for a position within the Tennessee Department of Correction and has begun offered employment conditioned upon successfully passing a drug or alcohol test, and may have begun work pending the results of the drug or alcohol test.
- D. <u>Chain of Custody</u>: The methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.
- E. <u>Confirmation Test:</u> A second analytical procedure to identify the presence of alcohol or a specific drug or its metabolites in a specimen.
- F. <u>Conviction</u>: A finding of guilt, including a plea of nolo contendere and/or imposition of sentence, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- G. <u>Drug</u>: Any controlled substance subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation.
- H. <u>Drug-free Workplace</u>: A site for the performance of work done in connection with an employee's job whereby employees are prohibited from engaging in unlawful manufacture, distribution, dispensing, possession, or use of alcohol or drugs.

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- I. <u>Drug Test or Drug Testing</u>: A chemical, biological or physical instrumental analysis administered by a laboratory authorized to do so pursuant to T.C.A. § 50-9-101 et seq., for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations governing drug testing adopted by the United States Department of Transportation or such other recognized authority approved by rule by the Commissioner of Labor and Workforce Development..
- J. <u>Employee</u>: For purposes of this policy, any person employed full-time or part-time by the Department of Correction.
- K. <u>Employee Assistance Program (EAP):</u> An established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services regarding employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work.
- L. <u>Employee Drug Testing Coordinator (EDTC)</u>: Individual appointed by the Commissioner to administer the Department's employee drug testing program.
- M. <u>Initial Drug or Alcohol Test</u>: The first alcohol or drug-screening test to determine the presence or absence of alcohol or drugs or their metabolites in a specimen(s).
- N. Medical Review Officer (MRO): A licensed physician employed by or contracted with a SAMHSA approved laboratory on behalf of TDOC, who has knowledge of substance abuse disorders, laboratory testing procedures and, chain of custody collection procedures who verifies positive and confirmed test results. This individual also possesses medical training to interpret and evaluate positive test results in relation to the individual's medical history or other relevant biomedical information.
- O. <u>Metabolite</u>: A substance that takes part in the process of metabolism. Metabolites are produced during metabolism or are constituents of food or substances taken into the body. When screening for drugs, laboratory personnel look for what is left in the urine after the body has broken down a complex drug into smaller pieces, i.e., they will find metabolites of the drug, not the original drug.
- P. <u>Prescription or Non-Prescription Medication</u>: A drug prescribed for use by a duly licensed physician, dentist, or other medical practitioner who is licensed to issue prescriptions or a drug that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, and/or injuries.
- Q. <u>Reasonable Suspicion</u>: A belief based on specific, objective, articulable facts and the reasonable inferences that may be drawn from those facts, or knowledge sufficient under the circumstances, to cause an ordinary prudent and cautious person to believe that an employee used or is using illegal drugs or alcohol.
- R. <u>Reconfirmation Test</u>: A third analytical procedure, paid for by the employee, to identify the presence of alcohol or a specific drug or its metabolites in a specimen.

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- S. <u>Return to Duty Testing</u>: The re-testing of an employee, prior to his/her returning to the workplace, after previously testing positive for the presence of drugs or alcohol.
- T. <u>Safety-Sensitive Position</u>: A position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations or work with controlled substances, or a position in which momentary lapse in attention could result in injury or death to another person.
- U. <u>Substance Abuse and Mental Health Services Administration (SAMHSA):</u> A Federal agency within the U.S. Department of Health and Human Services created to focus attention, programs, and funding on improving the lives of people with or who are at risk for mental and substance abuse disorders.
- V. <u>Zero Tolerance</u>: Appropriate employee disciplinary or corrective action, up to and including termination, upon the confirmation of alcohol or drug usage by the employee while in the workplace.
- V. <u>POLICY:</u> The TDOC is committed to a drug-free environment and will implement an employee drug testing program to assist in that effort. The Department shall maintain a zero tolerance for the illegal use of drugs on or off the job and the use of alcohol on the job.

VI. PROCEDURES:

- A. As part of the Department's drug-free workplace awareness program, a copy of the Department's drug-free workplace policy shall be made available to each employee.
- B. Each employee shall be required to certify his/her acknowledgement of this policy and the action to be taken if a violation occurs. The signed acknowledgement shall be maintained in the employee's personnel file. Copies of these acknowledgement forms may be obtained through the Central Office Benefits Coordinator.
- C. Employees shall be made aware of the Employee Assistance Program (EAP) and encouraged to seek assistance with any drug or alcohol related problems.
- D. As a condition of employment or continued employment an employee shall not:
 - 1. Use, possess, sell, trade, offer for sale, or offer to buy illegal drugs or otherwise engage in the illegal use of drugs on or off the job.
 - 2. Report to work visibly impaired or while possessing in his or her body, blood or urine, illegal drugs in any detectable amount.
 - 3. Report to work under the influence of or impaired by alcohol.
 - 4. Use prescription drugs illegally, including using prescription drugs that have not been legally obtained or using prescription drugs in a manner or for a purpose other than as prescribed.

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5. Tamper with a drug test being administered pursuant to this policy.

E. Types of Testing

- 1. <u>Applicant Drug and Alcohol Testing</u>: All applicants will be required to submit voluntarily to a drug test after a conditional offer of employment. Applicants for security-sensitive positions shall also be required to submit voluntarily to an alcohol test after a conditional offer of employment.
- 2. Reasonable Suspicion Drug and Alcohol Testing: Reasonable Suspicion Drug Testing: Employees shall be required to submit to drug and alcohol testing as a condition of continued employment to ascertain prohibited drug use in any case in which an individualized "reasonable suspicion" exists that the employee uses or is using illegal drugs or is using alcohol on the job. This may be based upon the following reasons:
 - a. Observable phenomena, such as direct observation of drug <u>or alcohol</u> use or possession or the physical symptoms of being under the influence of a drug <u>or alcohol</u>
 - b. A pattern of abnormal conduct or erratic behavior
 - c. The identification of an employee as a suspect in a criminal investigation involving drug possession, use, distribution, or trafficking
 - d. Information provided by reliable and credible sources or independently corroborated
 - e. Newly discovered information indicating that the employee may have tampered with a previous drug or alcohol test
- 3. <u>Follow-up Drug Testing</u>: An employee who, in the course of employment, enters an Employee Assistance program for a drug or alcohol related problem or enters a drug or alcohol rehabilitation program shall be required to submit to a drug or alcohol test, as appropriate, as a follow-up to such program. Such testing shall be required at least once a year for a two year period after successful completion of the program. No advance notice of a follow-up testing date shall be given to the employee.
- 4. <u>Post-accident/Critical Incident Testing</u>: After an accident which results in an injury, an employee shall be required to submit to a drug or alcohol test.
 - a. The employee shall be taken to a medical facility for immediate treatment of injury. Specimens shall be obtained at the treating facility or a designated collection site and transported to an approved testing laboratory.
 - b. No specimens shall be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must submit to testing.

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- c. In the case of non-emergency injuries reported after the fact, the injured employee must submit to testing at the time the injury is entered into the OSHA 200 Log or any authorized or required replacement for the OSHA 200 Log.
- 5. <u>Random Testing</u>: Employees in security-sensitive positions shall be subject to mandatory, random urinalysis drug testing. The EDTC shall ensure that the method of random selection remains confidential.
- F. As a condition of continued employment, an employee who is arrested for or charged with any criminal drug offense shall notify the employee's supervisor no later than 1 working day after such arrest or charge. (See Policy #302.06.)
- G. If an employee is convicted of violating any criminal drug statute and is found guilty after a due process hearing of any disciplinary offense that involves the use of or possession of a controlled substance or alcohol, he/she shall be subject to disciplinary action up to and including termination. The Department shall also require the employee to successfully complete a drug abuse program sponsored by an approved private or governmental institution.
- H. If an employee participating in an activity funded by a federal agency is convicted of violating any criminal drug statute in the workplace, the Department shall notify the appropriate federal agency. Notification shall be within ten days of receipt of notice regarding such conviction.

I. Testing

- 1. Specimens may be tested for cannabinoids (THC), cocaine, phencyclidine (PCP), opiates, amphetamines, their metabolites, or alcohol.
- 2. Contract laboratory staff trained to collect urinalysis specimens shall conduct urine specimen collection. Employees to be tested shall be required to provide positive photograph identification before entering the testing area. A photograph TDOC identification card and/or driver's license may be used for this purpose. Collection procedures shall be in conformance with the procedures compiled at 49 C.F.R., Part 40, and must be collected in accordance with those procedures using the split sample method. The chain of custody form developed by the Department of Labor for the Tennessee Drug Free Workplace Program shall be utilized.
- 3. Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity, identity, and retention of the specimen, and transportation of the specimen to the laboratory shall be in accordance with the SAMHSA guidelines or United States Department of Transportation regulations (49 C.F.R., Part 40).
- 4. A SAMHSA licensed and approved contract laboratory shall conduct an initial drug screening test using an immunoassay testing method. If a positive result is found, the laboratory shall immediately perform a confirmation test using gas chromatography/mass spectrometry (GC/MS).
- 5. Threshold detection levels shall be in accordance with SAMHSA guidelines.

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6. Positive results attained on both testing methods shall be reported to the MRO who shall proceed as set forth in Section VI.(J).

J. Reporting and Review of Results by MRO

- 1. The contract laboratory shall be report any specimens with evidence of dilution, contamination, tampering or any question normally requiring an MRO opinion to the MRO for disposition. The MRO may determine the need to re-test, re-collect, or otherwise modify the collection procedure to ensure adequate and appropriate testing.
- 2. The contract laboratory shall report confirmed positive tests to the MRO. After the laboratory has returned a confirmed positive test result to the MRO, he/she shall attempt to contact the employee within 24 hours to privately discuss any medications taken that might have affected the urine sample.
 - a. An employee who receives a positive confirmed test result from the MRO may contest or explain the result to the MRO within five (5) working days after receiving such notification. The MRO may require the employee to submit additional evidence to justify a positive drug test result, including, but not limited to a valid prescription or a letter from the individual's physician verifying a valid prescription.
 - b. The MRO shall review all medical records made available by the employee, if any, and determine whether a confirmed positive test could have resulted from legally prescribed medication. If an employee's or applicant's explanation or challenge is unsatisfactory to the medical review officer, or if the employee does not challenge the test result, the tests shall be considered verified. The medical review officer shall promptly report the verified test result to the EDTC.
- 3. If the MRO is unable to make contact with the employee within 24 hours after a minimum of three attempts spaced reasonably over the 24-hour period, he/she shall contact the EDTC and instruct the EDTC to contact the employee and inform the employee to contact the MRO. The MRO shall not inform the EDTC that the employee has a confirmed positive, adulterated, substituted or invalid test result.
 - a. The EDTC shall attempt to contact the employee and instruct him/her to call the MRO. The employee must contact the MRO within 72 hours after the notification by the EDTC. If the employee does not contact the MRO within 72 hours after being contacted by the EDTC, the MRO may verify the test result as positive or refusal to test, as applicable.
 - b. If the MRO contacts the EDTC as authorized above, and the EDTC is unable after reasonable efforts to contact the employee by telephone or to locate the employee through his/her supervisor, the EDTC may place the employee on temporary medical leave. The EDTC must leave a message for the employee by any practicable means (such as voicemail, e-mail, or letter) to contact the MRO. The EDTC shall inform the MRO of the date and time of the attempted contact.

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Reasonable efforts include, at a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the chain of custody form.

- 4. Upon being notified by the MRO of an employee's verified test result, the EDTC shall notify the appropriate Warden, Superintendent, or Director. The Warden, Superintendent, or Director shall notify the employee of his/her positive drug test.
- 5. Upon notification by the employer, the employee may request a reconfirmation test using the same specimen sample previously taken. A **Request for Drug Reconfirmation Testing, CR-pending,** shall be used for this purpose.
 - a. The reconfirmation test shall be performed by an independent SAMHSA-certified laboratory designated by the TDOC contractor.
 - b. The reconfirmation test shall be at the employee's expense. Payment for the reconfirmation test must be submitted by money order or cashier's check only and within 24 hours. (NOTE: Failure to submit payment for the reconfirmation test within 24 hours of notification of a positive result shall cancel the employee's request for a reconfirmation test.)
 - c. The employee shall be placed on administrative leave with pay pursuant to Tennessee Department of Personnel Rules and Regulations pending the reconfirmation test results.
- 6. Results from the analysis of the second test on the same specimen sample shall be evaluated by the MRO and be the final step for determining positive or negative findings. If there is a positive result, the employee shall be subject to disciplinary action up to and including termination. If the test is negative, the employee shall be permitted to return to work and be refunded the total amount paid for the testing.

K. Failure to Provide an Immediate Specimen

- 1. If the employee fails to provide a specimen immediately, he/she shall remain in the collection area with an escort and may be furnished up to a total of 40 ounces of fluids over a three-hour period.
- 2. If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt, the collection site person shall discontinue the collection and notify the EDTC.
- 3. Any employee who fails to provide a sufficient urine specimen may have a licensed physician who has performed an evaluation of the employee submit to the MRO a brief written statement indicating the physician's conclusion as to the employee's ability to provide an adequate amount of urine and the basis for it the conclusion. The MRO shall consider the statement in determining whether the employee has willfully refused to provide the required specimen. After reviewing the physician's statement, the MRO shall report his/her determination to the EDTC in writing. For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a

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urinary system dysfunction) or a documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.

L. Additional Procedures for Random Testing

- 1. TDOC Human Resources shall maintain a current list of employees who are subject to random testing as the result of being assigned to a security-sensitive position. The list shall be updated and provided to the department's employee drug testing contractor each month. All positions in the department shall be reviewed annually to determine whether a change in job functions necessitates a change in a position's designation or non-designation as security-sensitive.
- 2. On a schedule established by the Department and using the list of TDOC employees in security-sensitive positions supplied by TDOC Human Resources, the Department's Employee Drug Testing Contractor shall be responsible for generating a list of employees to be tested using a random method of selection and providing that list to the EDTC. The EDTC shall notify the Warden, Superintendent, Director, or designee that an employee has been selected for random drug testing. The Warden, Superintendent, Director, or designee shall notify the employee that he/she has been randomly selected for a drug test and direct the employee to immediately report to the designated test site to provide a specimen. Notification to the employee shall occur during the employee's current shift or, if the employee is not on duty at the time, during the next shift the employee works. Testing shall occur during the period the employee is scheduled to work, and as soon as practicable after the employee is notified of his/her selection. Collection personnel shall ensure that the **Employee Random Drug Testing Notice, CR-pending,** is completed.
- 3. The employee shall report at the specified time to the location indicated by the EDTC. Procedures for collection and testing of urine specimens and report and review of results shall be in accordance with Sections VI.(I) and (J) above.
- 4 The test shall be at the Department's expense.

M. Additional Procedures for Reasonable Suspicion Drug Testing

- 1. Employees shall be required to submit to drug and alcohol testing as a condition of continued employment to ascertain prohibited drug use in any case which an individualized "reasonable suspicion" exists that the employee uses or is using drugs or alcohol. This may be based upon the following reasons:
- 2. If any employee is suspected of using illegal drugs or of using alcohol, the Director, Warden, or Superintendent shall complete the <u>Recommendation for Employee Drug Testing: Observed Behavior Reasonable Suspicion/For Cause Record, CR-pending,</u> and gather all information, facts, and circumstances leading to and supporting this suspicion and shall document all the information used in forming the basis for testing. The Warden, Superintendent, or Director shall also notify the employee using the <u>Notification—Reasonable Suspicion or for Cause Drug Testing, CR-pending.</u> The Warden, Superintendent, or Director's written report shall become part of the file.

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created and maintained by the Director of Human Resources/designee for each reasonable suspicion drug test ordered.

- 3. The employee shall be escorted to a test site determined by EDTC where the initial test shall be conducted. Procedures for collection and testing of urine specimens and report and review of results shall be in accordance with Sections VI.(I) and VI.(J) above.
- 4. If the employee fails to provide a specimen immediately, the procedures outlined in Section VI.(K) above shall be followed. If the employee cannot provide a specimen during the three-hour timeframe, the escorting supervisor shall ensure that contact is made with Warden, Superintendent, or Director for further instruction.
- 5. The Warden, Superintendent, or Director shall promptly notify the EDTC anytime a reasonable suspicion alcohol or drug test is ordered
- N. <u>Confidentiality</u>: Subject to federal and state law, employee drug and alcohol testing results and records shall be maintained under strict confidentiality. The contractor, the MRO, and employees involved in the administration of this policy shall observe strict confidentiality of an employee's test results and treatment. Any employee violating this requirement of confidentiality will be subject to disciplinary action, up to and including termination.
- O. Any supervisor who compromises the integrity of the alcohol and drug testing program or who fails to enforce it shall also be subject to disciplinary action, up to and including termination.
- VII. ACA STANDARDS: 4-4063.
- VIII. EXPIRATION DATE:

